



Max D. Stern
Jonathan Shapiro
Lynn G. Weissberg
Patricia Garin
Martin E. Levin
Nora J. Chorover
Jeffrey P. Wiesner
Paul S. Sennott
Harley C. Racer
Rebecca Schapiro

Of Counsel
John Taylor Williams
David L. Kelston

RECEIVED

DEC 10 2014

OFFICE OF THE REGIONAL ADMINISTRATOR

BY CERTIFIED MAIL

December 4, 2014

Curt Spalding, Regional Administrator EPA
New England, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912
Certified Mail #7012 2210 0001 3554 4977

Gina McCarthy, Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Certified Mail #7012 2210 0001 3554 4984

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Certified Mail #7012 2210 0001 3554 3703

Re: Notice of Filing of **Complaint** and **Consent Decree** in
Clean Water Action v. E.L. Harvey & Sons, Inc. Case No. 1:14-cv-14334

Dear Sirs and Madam:

In accordance with Section 505(c)(3) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365 (c)(3), and 40 CFR 135.4, we are enclosing a copy of a complaint filed by this office on behalf of Clean Water Action against E.L. Harvey, & Sons, Inc., a Massachusetts corporation, on December 3, 2014.

Also enclosed pursuant to 40 CFR § 135.5 please find an executed copy of the parties' proposed Consent Decree resolving the above captioned action brought under the citizen suit provision of the Federal Water Pollution Control Act. Please feel free to call me if you have any questions about the enclosed. Thank you.

Sincerely,

Nora J. Chorover

Enclosures

cc: Marc J. Goldstein, Esq. 90 Canal Street Boston, MA 02114-2022
617-742-5800 Fax: 617-742-5858 E-Mail: sswg@sswg.com

NORA J CHOROVER (Bar No. 547352)
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, 5th Fl.
Boston, MA 02114
Phone: 617-742-5800
Fax: 617-742-5858

Filed Electronically 12/4/2014

Attorneys for Plaintiff
CLEAN WATER ACTION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CLEAN WATER ACTION,

Plaintiff,

v.

| E.L. HARVEY & SONS, INC.,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL PENALTIES**

(Clean Water Act,
33 U.S.C. §§ 1251 to 1387)

CLEAN WATER ACTION ("CWA") by and through its counsel, hereby alleges:

INTRODUCTION

1. This is a civil suit brought under the citizen suit enforcement provisions of the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "Clean Water Act" or "the Act"). Plaintiff seeks declaratory judgment, injunctive relief, and other relief the Court deems appropriate with regard to actions taken by E.L. Harvey & Sons, Inc. ("Defendant" or "E. L. Harvey") which resulted in the discharge of stormwater runoff from the E. L. Harvey facility at or around 68 Hopkinton Road in Westborough, Massachusetts into Cedar Swamp, in violation of the Act.
2. Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snow melt comes into contact with these materials, it picks up pollutants and transports them to nearby storm sewer systems, rivers, lakes, or coastal waters. Stormwater pollution is a significant source of water quality problems for the

nation's waters. The Massachusetts Department of Environmental Protection has determined that stormwater runoff represents the single largest source responsible for water quality impairments in the Commonwealth's rivers, lakes, ponds, and marine waters.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

4. On March 28, 2014, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant (the "Notice Letter"), to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection ("DEP"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

5. More than sixty days have passed since notice was served on Defendant and the state and Federal agencies. Neither the EPA nor the Commonwealth of Massachusetts has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

6. Venue is proper in the District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

PARTIES

7. Plaintiff CLEAN WATER ACTION ("CWA") is a nationwide non-profit public benefit corporation organized under the laws of the District of Columbia, with its principal office located in Boston, Massachusetts. CWA has approximately 50,000 members who live, recreate and work in and around waters of the Commonwealth of Massachusetts. CWA is dedicated to working for clean, safe and affordable water, protection of natural resources, the prevention of health-

threatening pollution, the creation of environmentally safe jobs and businesses, and the empowerment of people to make democracy work. To further these goals, CWA actively seeks Federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

8. Members of CWA have a recreational, aesthetic and/or environmental interest in Cedar Swamp. One or more of such members who reside in the Westborough area use and enjoy Cedar Swamp for recreation, sightseeing, wildlife observation and/or other activities in the vicinity of and downstream of Defendant's discharges. These members use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. The interests of CWA's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act, as alleged herein. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

9. Continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiff and the citizens of the Commonwealth of Massachusetts, for which harm they have no plain, speedy, or adequate remedy at law.

10. Defendant E. L. Harvey is a corporation organized under the laws of the Commonwealth of Massachusetts that operates a Scrap Recycling and Waste Recycling facility in Westborough.

STATUTORY BACKGROUND

11. Pollutant Discharges without a Permit are Illegal. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the Federal Environmental Protection Agency ("EPA") under the National Pollutant Discharge Elimination System ("NPDES"). Sections 301(a), 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

12. EPA Has Made Stormwater Discharges from Scrap Recycling and Waste Recycling Facilities Subject to the Requirements of EPA's General Industrial Stormwater Permit. In order to

minimize polluted stormwater discharges from industrial facilities, the Federal Environmental Protection Agency has issued a general industrial stormwater permit ("Stormwater Permit"). EPA's Stormwater Permit was first issued in 1995, and was reissued in 2000 and 2008. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008). Scrap recycling and waste recycling facilities are subject to the requirements of this Stormwater Permit. Stormwater Permit, Appendix D, pg. 97-102.

13. Scrap Recycling and Waste Recycling Facilities Must Comply with the Monitoring and Reporting Requirements of the Stormwater Permit. The Stormwater Permit requires these facilities to, among other things:

- a. ensure that stormwater discharges do not cause or have the reasonable potential to cause or contribute to a violation of water quality standards. Stormwater Permit, pg. 16;
- b. conduct monitoring of stormwater discharges at all Facility outfalls in each of the first four full quarters of permit coverage for compliance with benchmark limitations applicable specifically to scrap recycling and waste recycling facilities. Stormwater Permit, pp. 36, 97-102;
- c. report all monitoring results for all Facility outfalls to EPA by specified deadlines, Stormwater Permit, pg. 41;
- d. conduct corrective action after the average of 4 quarterly samples exceeds the EPA benchmark value. Stormwater Permit, pp. 18, 36;
- e. conduct routine facility inspections at least quarterly, quarterly visual assessments, and annual comprehensive inspections to, among other things, sample and assess the water quality of the facility's stormwater discharges, ensure that stormwater control measures required by the Permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not, Stormwater Permit, pp. 18-25;

- f. timely prepare and submit to EPA annual reports that include findings from the annual comprehensive site inspections and documentation of corrective actions. Stormwater Permit, pp. 24, 41; and
 - g. comply with any additional state requirements. *see* Stormwater Permit, pp. 140-141.
14. Scrap Recycling Facilities Must Ensure that Their Control Measures Minimize Pollutant Discharges. Stormwater Permit, § 2 (pg. 12). Such facilities must modify their control measures as expeditiously as practicable whenever they find they are “not achieving their intended effect of minimizing pollutant discharges.” *Id.* § 2.1
15. Scrap Recycling Facilities Must Ensure That Stormwater Discharges Do Not Cause or Have The Reasonable Potential to Cause or Contribute to a Violation of Water Quality Standards. Stormwater Permit, § 2.2
16. Citizens may bring an action to enforce these requirements. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day, pursuant to Sections 309(d) and 505 of the Act. 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

STATEMENT OF FACTS

17. Defendant owns and operates a facility at 68 Hopkinton Road, Westborough, Massachusetts (the “Facility”). Operations at the Facility include scrap recycling and waste recycling.
18. Numerous activities at the Facility take place outside and are exposed to rainfall. These include, without limitation, stockpiling and storage of scrap recyclables and other materials, materials loading and unloading, scrap recyclable processing, and vehicle and equipment maintenance.

19. On January 29, 2009, Defendant submitted a Notice of Intent to EPA that it intended operations at the Facility to be covered by the Stormwater Permit.
20. During rain events, stormwater running over the facility becomes contaminated with pollutants.
21. Stormwater runoff from the Facility discharges to Cedar Swamp, which is a tributary to Sudbury River.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Comply with the Monitoring Requirements of the Stormwater Permit: Violations of 33 U.S.C. § 1311(a)

22. Plaintiff re-alleges and incorporates Paragraphs 1 - 21, inclusive, as if fully set forth herein.
23. Defendant has failed to consistently comply with the Stormwater Permit's requirement for monitoring of its stormwater discharges.
24. Defendant's violations establish an ongoing pattern of failure to comply with the Permit's monitoring requirements.
25. Each of Defendant's violations of the monitoring requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the failure to monitor occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the violation occurred and/or continued.

THIRD CAUSE OF ACTION

Failure to Comply with the Reporting Requirements of the Stormwater Permit: Violations of 33 U.S.C. § 1311(a)

26. Plaintiff re-alleges and incorporates Paragraphs 1-25, inclusive, as if fully set forth herein.
27. Defendant has failed to consistently comply with the Stormwater Permit's requirement for reporting benchmark monitoring results, findings from annual comprehensive site inspections and

documentation of corrective actions to EPA. Stormwater Permit. [4.3.1. 4.3.2. 7.2]. Defendant's violations of the Permit's reporting requirements are separate and distinct from violations of the Permit's monitoring requirements.

28. These violations establish an ongoing pattern of failure to comply with the Permit's reporting requirements.

29. Each of Defendant's violations of the benchmark monitoring reporting and annual inspection reporting requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act. 33 U.S.C. § 1311(a), for each day on which the failure to report occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the violation occurred and/or continued.

FOURTH CAUSE OF ACTION

Failure to Reduce and/or Eliminate Pollutants to the Extent Achievable: Violations of 33 U.S.C. § 1311(a)

30. Plaintiff re-alleges and incorporates Paragraphs 1-29, inclusive, as if fully set forth herein.

31. Defendant has failed to comply with the Stormwater Permit's requirement to reduce and/or eliminate pollutants in its stormwater discharges to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice. Stormwater Permit. [2.1].

32. Each of Defendant's violations of the reduction and/or elimination requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act. 33 U.S.C. § 1311(a), for each day on which the violation occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the failure to reduce and/or eliminate pollutants occurred and/or continued.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

1. Declare Defendant to have violated and to be in violation of the Act as alleged herein;
2. Enjoin Defendant from discharging pollutants from the Facility and to the wetlands and waterways surrounding and downstream from the Facility;
3. Require Defendant to implement the requirements of the Stormwater Permit;
4. Order Defendant to pay civil penalties of up to \$37,500 per day of violation, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 74 Fed. Reg. 626, 627 (2009);
5. Order Defendant to take appropriate actions to restore the quality of navigable waters impaired by their activities;
6. Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and
7. Award any such other and further relief as this Court may deem appropriate.

Dated: 12/4/2014

Respectfully submitted.

/s/ Nora J. Chorover

NORA J. CHOROVER (Bar No. 547352)
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, 5th Fl.
Boston, MA 02114
Phone: 617-742-5800
Fax: 617-742-5858

Attorneys for Plaintiff
CLEAN WATER ACTION

CLEAN WATER ACTION'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Massachusetts District Court Local Rule 7.3, Plaintiff Clean Water Action states that it does not have a parent corporation and no publicly held company owns 10% or more of its stock.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CLEAN WATER ACTION,

Plaintiff,

v.

E.L. HARVEY & SONS, INC.,

Defendant.

Case No.:

CONSENT DECREE

WHEREAS, plaintiff Clean Water Action ("Clean Water Action") is a nationwide non-profit organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work;

WHEREAS, defendant E.L. Harvey & Sons, Inc. ("Harvey") operates, among other things, a scrap recycling facility at and around 68 Hopkinton Road, Westborough, Massachusetts that is the subject of this lawsuit (the "Facility");

WHEREAS, Clean Water Action alleges that stormwater from the Facility discharges to wetlands and waterways adjacent to the Facility, which discharge into Cedar Swamp, which is tributary to the Sudbury River and that certain of these stormwater discharges are regulated pursuant to the federal Clean Water Act (the "Act") and covered by the Final National Pollutant Discharge Elimination System ("NPDES") Multi-Sector General Permit issued by the United States Environmental Protection Agency (the "Storm Water Permit"). *See* 33 U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008);

WHEREAS, on March 28, 2014, Clean Water Action provided notice of alleged violations of the Act, and of Clean Water Action's intention to file suit against Harvey, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to Harvey, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, following receipt of the March 28, 2014 Notice, Harvey has taken certain steps, including retention of a new stormwater consultant, review of on-site housekeeping and maintenance in areas potentially impacting stormwater quality, and installation of stormwater management equipment, to improve the quality of certain stormwater discharges from the Facility;

WHEREAS, Harvey anticipates that these steps, together with implementation of the Best Management Practices ("BMPs") and other measures set forth herein, including use of a vacuum street sweeper at the Facility on business days (weather permitting), and in Harvey's updated Stormwater Pollution Prevention Plan ("SWPPP") for the Facility, will enable it to comply with applicable state water quality standards and any applicable effluent standards set forth in the Storm Water Permit;

WHEREAS, Harvey denies the allegations of Clean Water Action that Harvey has violated the Storm Water Permit or the Act;

WHEREAS, the parties have decided that it is in the best interests of all parties to resolve the litigation by agreement without adjudication of any fact, allegation, or law set forth above; and

WHEREAS, this Consent Decree ("Consent Decree") shall be submitted to the United States Department of Justice for the forty-five (45) day statutory review period pursuant to 33 U.S.C. § 1365(c).

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

INJUNCTIVE RELIEF

1. Harvey agrees to operate the Facility in compliance with the applicable requirements of the Storm Water Permit and the Act, including any amendments to the Storm Water Permit or the Act that may be made during the term of this Consent Decree.

2. Harvey will implement the attached SWPPP at the Facility. The SWPPP may be periodically updated by Harvey provided such changes are consistent with the requirements of the Storm Water Permit.

3. Harvey shall implement the following measures:

A. Compliance Monitoring. Harvey shall ensure that stormwater samples collected are “representative of the volume and nature of the monitored activity.” Harvey shall comply with Section 6 of the Permit, and with Appendix B, sections 10-12, thereto. Harvey shall follow the applicable monitoring procedures set forth in EPA’s Industrial Storm Water Monitoring and Sampling Guide (March 2009) (“Sampling Guide”) and Harvey’s SWPPP. Sampling events shall be preceded by at least three (3) calendar days without storm water having been discharged from the sampled outfalls. Harvey shall provide Clean Water Action with copies of the analytical laboratory results of the sampling at the same time that it submits its sampling results to EPA. Nothing in this paragraph limits Harvey’s sampling obligations under the Storm Water Permit.

B. Hardness Analysis. If Harvey recalculates the values for hardness applicable to the Facility pursuant to the Storm Water Permit during the term of this Consent Decree, Harvey shall submit to Clean Water Action documentation sufficient to demonstrate

compliance with the requirements of the Storm Water Permit for such determination within five (5) business days of submission of such hardness values to EPA.

C. Reporting Practices. Harvey shall report monitoring data collected pursuant to the Storm Water Permit to EPA in accordance with Section 7.1 of the Storm Water Permit and shall note information required under Section 6 of the Storm Water Permit and, to the extent applicable, Appendix B, sections 10-12, thereto.

D. Control Measures. Within sixty (60) days following the Effective Date of this Consent Decree, Harvey shall complete the following:

1. Install and utilize an automatic sampler at outfall 5;
2. Install and utilize a v-notch weir at outfall 5 and any other outfall where the discharge is sampled at a gravel swale;
3. Purchase a vacuum street sweeper to replace the mechanical street sweeper for use at the Facility and implement the sweeping protocol as set forth in the SWPPP. Harvey retains the right to amend the frequency and other aspects of the sweeping protocol consistent with the requirements of the Storm Water Permit.

E. Involvement by Clean Water Action.

1. Harvey shall permit representatives of Clean Water Action to perform up to two site visits to the outdoors areas of the Facility during normal daylight business hours during each year for the two years following the Effective Date of this Consent Decree, provided that Clean Water Action notifies Harvey in writing at least two (2) business days in advance of any such site visit. For each such site visit, Clean Water Action personnel shall execute an access agreement and waiver of claims of the same type used during the original site visit to the Facility,

comply with safety requirements, and be accompanied at all times by an employee of Harvey. During such site visit, Clean Water Action shall have access to and permission to copy Harvey's current SWPPP and any and all documentation required to be kept on site by the Storm Water Permit.

2. For two years following the Effective Date of this Consent Decree, Harvey shall provide Clean Water Action with copies of all documents that it submits to EPA, the Commonwealth of Massachusetts and/or the Town of Westborough concerning the Facility's stormwater discharges including but not limited to (a) all documents concerning the addition of stormwater controls; (b) all documents and reports submitted as required by the Storm Water Permit; (c) all laboratory reports and analytical results of storm water sampling performed by or for Harvey and submitted as required by the Storm Water Permit; and (d) all reports of the quarterly and annual Facility inspections and visual assessments submitted as required by the Permit. Any documents submitted to a governmental entity pursuant to this sub-paragraph, such as quarterly Discharge Monitoring Reports ("DMRs"), Annual Reporting Forms, or documents concerning approval of any berm improvements shall be submitted to Clean Water Action by emailing them to: nchorover@sswg.com contemporaneously with submission to the governmental entity. In addition, Harvey Quarterly Visual Inspection Forms and Quarterly Sampling Analytical Forms, including laboratory results for the samples, shall be submitted to Clean Water Action with the Annual Report.

PAYMENT, FEES AND COSTS

4. Harvey shall pay the sum of \$50,000 (the "Payment") to OARS, Inc. to fund projects facilitating the control of invasive water chestnut in the Sudbury River, such as construction of a boat launch for water chestnut harvesting on the Sudbury River in Framingham. The Payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action. Harvey's payment to OARS, Inc. shall be made in four (4) equal installments of \$12,500, with the first payment due the first day of the first full calendar quarter following the Effective Date of this Consent Decree, and each successive payment due the first week each of the next three calendar quarters. The Payment shall be made to OARS, Inc. and shall be delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to: Alison Field-Juma, Executive Director, OARS, Inc., 23 Bradford Street, Concord MA 01742. A copy of each such Payment shall be provided to Clean Water Action.

5. Clean Water Action represents that it will have incurred at least \$22,000 in costs, including legal fees, to prosecute and settle this action, up through the entry of this Consent Decree. Within thirty (30) days after the Effective Date of this Consent Decree, Harvey shall reimburse Clean Water Action in the amount of \$22,000 to defray Clean Water Action's investigation fees and costs, expert fees and costs, and attorneys' fees incurred up to the date of entry of this Consent Decree. Payments shall be made by check or money order, made out to Stern, Shapiro, Weissberg & Garin, LLP, Client Trust Account, and be delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to Nora J. Chorover, at the address listed in Paragraph 23.

6. Within sixty (60) days after the Effective Date of this Consent Decree, Harvey shall pay to Clean Water Action \$10,000 to be placed in the Client Trust Account held for its benefit by Stern, Shapiro, Weissberg & Garin, LLP, to be used to reimburse Clean Water Action for reasonable fees and costs incurred to monitor Harvey's compliance with this Consent Decree for a term of two years after the Effective Date of this Consent Decree. Payment shall be made by check or money order, made out to Stern, Shapiro, Weissberg & Garin, LLP, Client Trust Account, and be delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to Nora J. Chorover, at the address listed in Paragraph 23. Clean Water Action shall provide Harvey with an accounting of the amounts withdrawn from these funds by payee within ten days of the annual anniversary of the Effective Date of this Consent Decree. Any funds remaining at the expiration of two years from the Effective Date of this Consent Decree will be repaid to Harvey within thirty (30) days of such expiration date. Nothing in this paragraph or in this Consent Decree shall restrict Clean Water Action's right to seek additional compensation for fees or costs that it incurs to enforce Harvey's compliance with the terms of this Consent Decree, and nothing herein shall be construed as a waiver of Harvey's right to contest any such action.

EFFECTIVE DATE OF CONSENT DECREE

7. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and EPA. Therefore, upon signing of this Consent Decree by the parties, Clean Water Action shall serve, or cause to be served, copies of this Consent Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5. Upon the expiration of the forty-five (45)

day review period provided by 33 U.S.C. § 1365(c)(3), the parties will jointly move the Court for entry of this Consent Decree and issuance of a Final Judgment and jointly seek a Dismissal with Prejudice. The date that the Court enters this Consent Decree as a final judgment and dismisses this case with prejudice is the Effective Date of this Consent Decree. In the event the Court does not so enter this Consent Decree in the form presented as a final judgment, subject to Paragraph 26 below, the provisions of this Consent Decree shall be null and void and of no effect.

RELEASE

8. Upon the Effective Date of this Consent Decree, Clean Water Action, on its own behalf and on behalf of its members, parents, subsidiaries, affiliates, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Harvey and all its members, parents, subsidiaries, affiliates, directors, officers, agents, attorneys, representatives, employees, predecessors in interest in or title to the Facility, successors, and assigns from, and waives forever all claims, whether known or unknown, for damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure to comply with the Act and the Storm Water Permit at the Facility, up to and including the Effective Date of this Consent Decree. Clean Water Action does not release any claims to enforce any term of this Consent Decree. Clean Water Action does not release any claims for violations of the Storm Water Permit or the Act that may occur or continue after the Effective Date of this Consent Decree.

9. Harvey, on its own behalf and on behalf of its parents, subsidiaries, affiliates, predecessors in interest in or title to the Facility, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Clean Water Action and its members,

subsidiaries, affiliates, successors, assigns, directors, officers, agents, attorneys, representatives, and employees from, and waives forever all claims, whether known or unknown, which arise from or pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to this Action up to and including the Effective Date of this Consent Decree. Harvey does not release any claims to enforce any term of this Consent Decree. Harvey does not release any claims for activities or events that may occur or continue after the Effective Date of this Consent Decree.

DISPUTE RESOLUTION

10. If a dispute under this Consent Decree arises, or either party believes that a breach of this Consent Agreement has occurred, the parties shall meet and confer within fourteen (14) calendar days of receiving written notification from the other party of a request for a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred or should have occurred, either party shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of Massachusetts, which shall retain jurisdiction over this matter for the limited purposes of enforcement of the terms of this Consent Decree and in accordance with Paragraph 27. The parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), applicable case law interpreting such provision, and any such other applicable law and case law.

FORCE MAJEURE

11. No party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances beyond the party's control, including, without limitation, any act of God, war, fire, earthquake, flood, or restraint by court order or public authority. A Force Majeure event does not include normal inclement weather or inability to pay. Any party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and has been unable to overcome by exercise of due diligence, the Force Majeure.

MISCELLANEOUS PROVISIONS

12. This Consent Decree was entered by the parties as a settlement of disputed matters, and neither this Consent Decree or any action taken pursuant to it shall be construed as an admission of any fact or liability, either expressed or implied; and this Consent Decree shall not be offered by the parties hereto or any other person as evidence of any alleged fact or liability, nor entered in any legal or administrative proceeding for any purpose other than to enforce the terms hereof.

13. The Term of this Consent Decree shall be two (2) years after the Effective Date.

14. This Consent Decree shall be binding on the parties and on their respective successors and assigns.

15. This Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

16. Nothing in this Consent Decree shall be construed to limit in any way Harvey's obligations under any federal, state, or local law or regulation governing any activity required by this Consent Decree.

17. In the event that any of the provisions of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.
18. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.
19. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.
20. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein. This Consent Decree and any attachments are made for the sole benefit of the parties, and no other person or entity shall have any rights or remedies under or by reason of this Consent Decree, unless otherwise expressly provided for therein.
21. The parties expressly understand and agree that each party has freely and voluntarily entered into this Consent Decree with and upon advice of counsel.
22. This Consent Decree and any attachments contain all of the terms and conditions agreed upon by the parties relating to the matters covered by the Consent Decree, and supersede any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the parties, whether oral or written, respecting the matters covered by this Consent Decree. This Consent Decree may be amended or modified only by a writing signed by the parties or their authorized representatives, followed by order of the Court adopting such change.
23. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall,

unless otherwise provided in this Consent Decree, be hand delivered, sent by U.S. Mail, postage prepaid, or by nationally recognized overnight delivery company, and addressed as follows, or sent via electronic mail to:

Nora J. Chorover
Attorney for Clean Water Action
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, 5th Floor
Boston, MA 02114
nchorover@sswg.com

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Harvey pursuant to this Consent Decree shall, unless otherwise provided in this Consent Decree, be hand delivered, sent by U.S. Mail, postage prepaid, or by nationally recognized overnight delivery company, and addressed as follows, or sent via electronic mail to:

Benjamin Harvey
President
E.L. Harvey & Sons, Inc.
68 Hopkinton Road
Westborough, MA 01581
baharvey@elharvey.com

with a copy to:

Stephen M. Richmond
Beveridge & Diamond, P.C.
15 Walnut Street, Suite 400
Wellesley, MA 02481
srichmond@bdlaw.com

Each party shall notify the other parties of any change in their contact information within fourteen (14) days of any such change.

24. Harvey does not, by entering into this Consent Decree, waive any defenses or rights with respect to any allegation or claim asserted by anyone, including Clean Water Action, of any kind or nature arising or alleged after the date Harvey signs this Consent Decree, and Harvey does not

waive any defenses or rights with respect to any allegation or claim which may be asserted by EPA or the Commonwealth of Massachusetts.

25. Signatures of the parties transmitted by facsimile or electronic mail are binding.

26. If for any reason the Court should decline to approve this Consent Decree in the form presented, the Consent Decree shall be null and void and the parties agree to work together in good faith to attempt to agree on modifications to this Consent Decree within thirty (30) days to make it acceptable to the Court.

27. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the parties to this Consent Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

Clean Water Action

By: _____ Dated: _____

E.L. Harvey & Sons, Inc.

By: Ben A. Harvey Pres Dated: 11/19/2014

APPROVED:

United States District Judge

waive any defenses or rights with respect to any allegation or claim which may be asserted by EPA or the Commonwealth of Massachusetts.

25. Signatures of the parties transmitted by facsimile or electronic mail are binding.

26. If for any reason the Court should decline to approve this Consent Decree in the form presented, the Consent Decree shall be null and void and the parties agree to work together in good faith to attempt to agree on modifications to this Consent Decree within thirty (30) days to make it acceptable to the Court.

27. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the parties to this Consent Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

Clean Water Action

By:  Dated: November 20, 2014

E.L. Harvey & Sons, Inc.

By: _____ Dated: _____

APPROVED:

United States District Judge